

FM AREA DIVERSION PROJECT

# Property Owner Information Packet for Cass County Commission

August 17<sup>th</sup>, 2020

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PROPERTY OWNER: David Brakken

LAND AGENT: Patrick Roberts with ProSource

OIN: 9174



FM AREA  
**DIVERSION**  
PROJECT

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## Written Correspondence Timeline – David Brakken

OIN 9174	Sent	Received
Offer to Purchase	8/7/2019	8/7/2019
Formal Negotiations and Written Offer of Just Compensation	2/11/2020	2/14/2020
Request for Meeting	3/4/2020	3/7/2020
Notice of Intent to Take Possession of Right-of-Way	5/22/2020	5/26/2020
Request for Approval to Take Possession of Necessary Right-of-Way and Temporary Easement	7/8/2020	7/8/2020
Invitation to Attend Public Meeting	7/13/2020	7/14/2020
Commission Meeting Date	8/17/2020	

**CASS COUNTY COMMISSION**  
**CHECKLIST — COMPLIANCE WITH N.D. CENT. CODE § 61-16.1-09(2)**  
**FARGO-MOORHEAD AREA DIVERSION PROJECT**

A. Subject Property Information:

1. Landowner: David F. Brakken
2. Land Agent: Patrick Roberts
3. Parcel No.: 15-0000-12655-030
4. OIN No.: 9174

B. Verification:

1. NDCC § 61-16.1-09(2)(b)(1)(a) requires the Cass County Joint Water Resource District (“CCJWRD”) to conduct 60 days of informal negotiations.
  - Did CCJWRD verify at least 60 days of informal negotiations with Landowner:  
\_\_\_\_\_
2. NDCC § 61-16.1-09(2)(b)(1)(b)[1] requires CCJWRD to send the landowner an appraisal and written offer for just compensation by certified mail or commercial delivery requiring a signed receipt or other evidence of constructive notice.
  - Did CCJWRD verify it sent Landowner an appraisal and written offer for just compensation: \_\_\_\_\_
  - Did CCJWRD verify service of the appraisal and offer by certified mail or commercial delivery, and that Landowner either signed for them or had constructive notice: \_\_\_\_\_
3. NDCC § 61-16.1-09(2)(b)(1)(b)[2] requires CCJWRD to send Landowner a written request for a meeting by certified mail or commercial delivery requiring a signed receipt [if the parties have not come to an agreement within 15 days of Landowner’s receipt or notice of CCJWRD’s offer].
  - Did CCJWRD verify it sent Landowner a written request for a meeting by certified mail or commercial delivery, and that Landowner either signed for the notice or had constructive notice: \_\_\_\_\_

4. NDCC § 61-16.1-09(2)(b)(1)(b)[3] requires CCJWRD to send Landowner a written notice of intent to take possession of the right of way, by certified mail or commercial delivery requiring a signed receipt [if the parties have not come to an agreement within 30 days of Landowner's receipt or notice of CCJWRD's invitation to a meeting].
  - Did CCJWRD verify it sent a written notice of intent to take possession of right away by certified mail or commercial delivery, and that Landowner either signed for the notice or had constructive notice: \_\_\_\_\_
5. NDCC § 61-16.1-09(2)(b)(2) requires all written communications to Landowner to include contact information for responding to CCJWRD and a description of the required negotiation timeline.
  - Did CCJWRD verify that all written communications to Landowner included contact information for responding to CCJWRD and a description of the required negotiation timeline: \_\_\_\_\_
6. NDCC § 61-16.1-09(2)(b)(3) prohibits a district from including or utilizing any reference to quick take eminent domain during negotiations.
  - Did CCJWRD verify it did not include or utilize any reference to quick take eminent domain during negotiations: \_\_\_\_\_

If the Commission answers in the affirmative to the above questions,

**RECOMMENDED MOTION:**

- I move to authorize the Cass County Joint Water Resource District to utilize quick take eminent domain under Section 61-16-1.09(2) of the North Dakota Century Code to take an easement for a right of way, and temporary easement (if any), regarding the OIN described above in A.4.

# FM Area Diversion Project

## Property Negotiation Summary

---

August 10, 2020

Owner	David Brakken
Address	16868 44 <sup>th</sup> Street SE Horace, Cass County, North Dakota
Property Location	Diversion Channel
Property Type	Single Family rural residence - owner occupied
OIN	OIN 9174
Land Firm & Land Agent	ProSource - Pat Roberts

**Property Need:** Diversion Channel

### Valuation and Negotiation Summary:

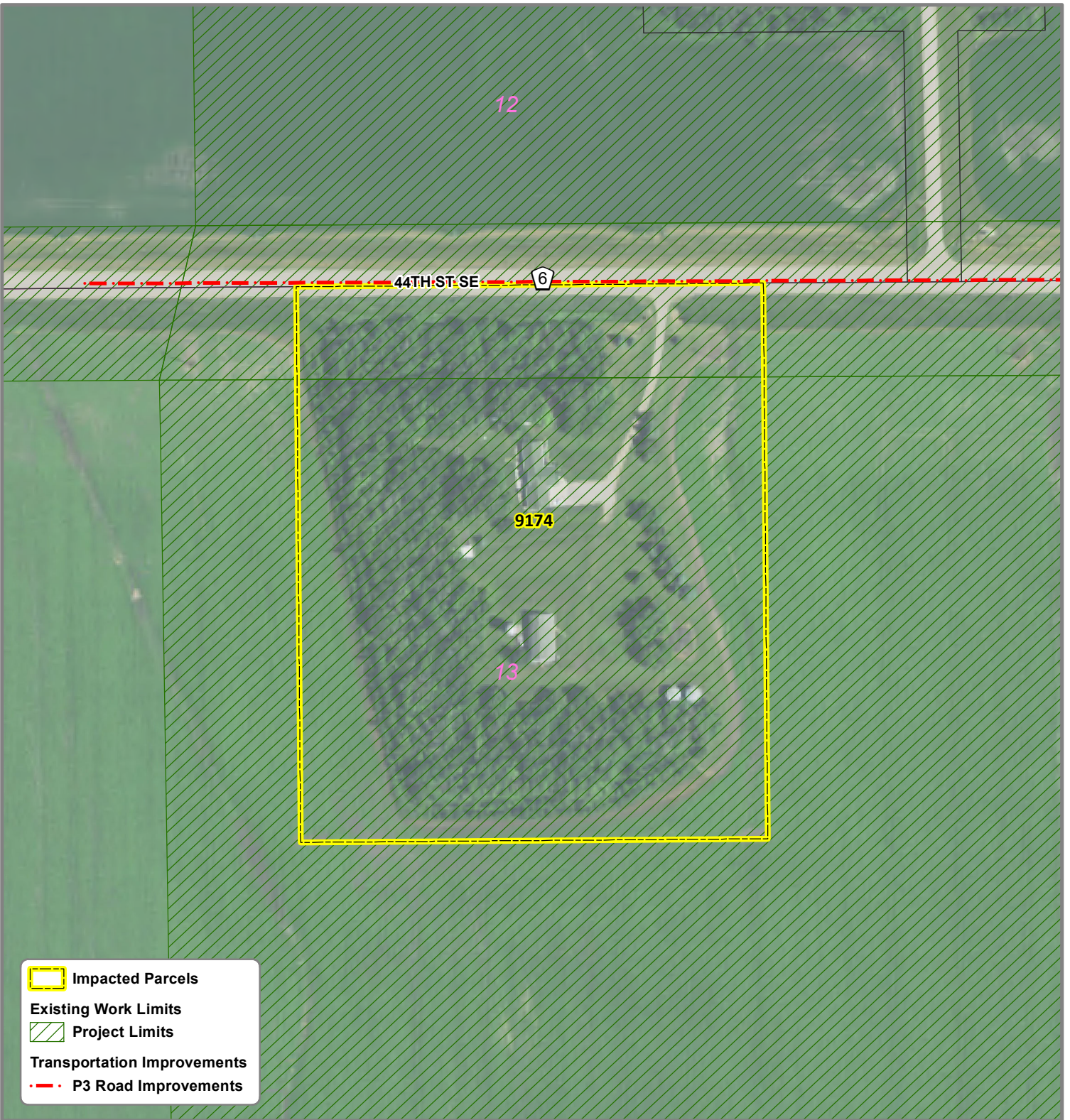
Appraisal Value / Date	\$379,000 / April 4, 2019
1 <sup>st</sup> Landowner Counteroffer	\$600,000 September 18, 2019 67% increase over the appraised value
2 <sup>nd</sup> Landowner Counteroffer	\$691,000 December 11, 2019 82% increase over the appraised value
3 <sup>rd</sup> Landowner Counteroffer	\$780,000 April 8, 2020 106% increase over the appraised value

### Negotiation Notes

- Initial meeting with the property owners and they revealed their disappointment with the appraisal. Patrick Roberts shared the idea of a counteroffer over 10% of appraised (\$406,900) and provided insights about supporting information that would be required for a counteroffer that was significantly greater than the appraisal that was completed by the CCJWRD and that such supporting information would need to be provided by the property owner.
- Land agent was introduced to and spoke with attorney Jack Dwyer regarding this parcel and informed Mr. Dwyer that there is an opportunity to negotiate on the properties that he represents.
- Land agent received an email from attorney Dwyer and within the email a counteroffer was presented on behalf of his client David for \$600,000 for the acquisition of his 10-acre Farmstead including their residence and all outbuildings. The email included an opinion of value for the comparable properties used in the appraisal and additional information to consider.
- Patrick Roberts provided a response to attorney Dwyer requesting additional documentation to further support the counteroffer that had been proposed.
- Land agent received an email that David Brakken had hired a real estate agent to perform a market analysis to justify his request.
- Land Agent received an email from attorney Dwyer with pdf attachments including a plan for the development of the property, which would subdivide the 10 acres into 5 lots and also provided an increased counteroffer of \$691,000 based on this plan (an increase of 82%+).

August 10, 2020

- Based on the type of documentation that was provided to support the \$691,000 counteroffer and the absence of substantiated comparables, I advised attorney Dwyer that it would be best to have a 2<sup>nd</sup> appraisal completed on the property, as the next step in the valuation/negotiation process.
- Most recent counteroffer from the Attorney for David Brakken was \$780,000, an increase of 106% over appraised value.
- Negotiations between the Property Owner & Land Agent/CCJWRD have stalled due to the difference in opinion of the further development potential of the 10-acre parcel, so a mutually agreeable valuation for the property has not been reached.



**Impacted Parcels**

**Existing Work Limits**

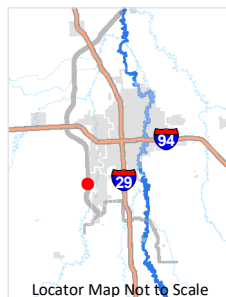
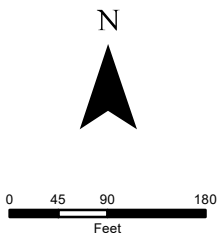
**Project Limits**

**Transportation Improvements**

**P3 Road Improvements**

*Any reliance upon this map is at user's own risk. AE2S does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. All parcel acreages and legal descriptions shown hereon are based on County GIS data. Final acreages and legal descriptions to be determined by boundary survey.*

Coordinate System: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet | Produced by: hrecords - AE2S, Inc. |  
 C:\Data\Projects\GIS Projects\FM Area Diversion\Projects\Land Acquisition\Project Work Package\Project Wide\Individual Property Maps - General Inquiry\IndividualLayout8x10v105.mxd



**OIN: 9174**  
**DAVID F BRAKKEN**  
**Parcel ID: 15-0000-12655-030**  
**Cass County, ND**

FM AREA DIVERSION  
 Map Date: 7/16/2020







August 7, 2019

David F. Brakken  
PO Box 102  
Horace, ND 58047

**Hand Delivered**

**RE: Offer to Purchase**  
Fargo-Moorhead Area Flood Diversion Project  
**Property Address:** 16868 44th St SE, Horace ND  
Property ID: 9174 PID: 15-0000-12655-030

Dear David F. Brakken:

Cass County Joint Water Resource District (CCJWRD) will be acquiring your property located at 16868 44th St SE, Horace ND for the proposed construction of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project for the purpose of diversion of flood water from the Red River and its tributaries around Fargo-Moorhead. CCJWRD has hired ProSource Technologies LLC as the consultant to aid in the acquisition of your property.

CCJWRD hereby makes an approved offer to all interested parties who may have an interest in the real estate rights to be acquired the sum of \$379,000.00. This offer is based on an independent appraisal by Integra Realty Resources.

You will have reasonable time to consider this offer. You are not required to move for at least 90 days after you have signed the purchase agreement. This offer to purchase is not considered final until the CCJWRD Board officially accepts the purchase agreement.

If you accept the offer, the parcel will be acquired by direct purchase, and you will be paid upon satisfactory evidence of marketable title. If you do not accept the offer, CCJWRD wishes to continue negotiating with you regarding purchase of your property. Ultimately, the property may be acquired in an eminent domain proceeding if we cannot agree to the terms of the purchase within a reasonable time.

Your signature on page two (2) of this document is the only verification that this "Offer to Purchase" has been given to you. You also acknowledge that you have received the "Relocation Assistance" brochure, and a copy of the "Appraisal Report." Your signature does not affect your right to have the final amount determined through eminent domain proceedings in the event the direct purchase/negotiation method of acquisition is unsuccessful.

Page 2  
David F. Brakken  
Offer to Purchase Letter

Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) provides for 1) The relocation advisory services; 2) payment for your moving expenses; and 3) replacement housing payment. You may be reimbursed or paid for your actual reasonable moving costs and related moving expenses. A notice of relocation eligibility letter will be provided to you that will further explain these services. The URA is a non-negotiable federal assistance program that provides funding for the above services.

I HEREBY ACKNOWLEDGE RECEIPT OF THE OFFER LETTER, THE GUIDE BOOK, AND COPY OF THE APPRAISAL REPORT.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

8-7-19 PRR hand delivered the offer letter, GIN and appraisal and Mr. David Brakken refused to signed the offer letter and GIN as received.







**CERTIFIED MAIL – RETURN RECEIPT REQUESTED – HAND DELIVERY**

Cass County  
Joint Water  
Resource  
District

February 11, 2020

David F. Brakken  
16868 44th Street SE  
Horace, ND 58047  
**Certified No. 7018 0040 0000 5525 6748**

Dan Jacobson  
Chairman  
West Fargo, North Dakota

Rodger Olson  
Manager  
Leonard, North Dakota

Ken Loughheed  
Manager  
Gardner, North Dakota

Jacob Gust  
Manager  
Fargo, North Dakota

Keith Weston  
Manager  
Fargo, North Dakota

Greetings:

RE: Cass County Joint Water Resource District  
Fargo-Moorhead Area Diversion Project  
Formal Negotiations and Written Offer of Just Compensation  
OIN: 9174  
Parcel No.: 15-0000-12655-030

The Cass County Joint Water Resource District (the "District") is in the process of acquiring property interests necessary for the Fargo-Moorhead Area Diversion Project (the "Project"), and the District has been in discussions with you regarding right of way the District must acquire from you to accommodate the Project. The District directed me to provide you this letter as the District's formal offer to purchase right of way from you. More specifically, to accommodate the Project, the District must acquire right of way from you over property located in Cass County and identified as Parcel Identification Number 15-0000-12655-030. The legal description of the property to be acquired is:

That part of the Northeast Quarter (NE¼) of Section Thirteen (13), Township One Hundred Thirty-eight (138) North, Range Fifty (50) West of the Fifth Principal Meridian, Cass County, North Dakota described as follows:

Commencing at a found iron monument designating the Northeast corner of said Section 13, thence South 87°39'51" West on an assumed bearing along the North line of said Northeast Quarter a distance of 1,610.00 feet to the point of beginning of the tract to be described; thence South 02°20'09" East a distance of 720.00 feet; thence South 87°39'51" West a distance of 605.00 feet; thence North 02°20'09" West a distance of 720.00 feet to a point on the North line of said Northeast Quarter; thence North 87°39'51" East along the North line of said Northeast Quarter a distance of 605.00 feet to the point of beginning. The above-described tract contains 10.00 acres.

Carol Harbeke Lewis  
Secretary-Treasurer

1201 Main Avenue West  
West Fargo, ND 58078-1301

701-298-2381  
FAX 701-298-2397  
[wrđ@casscountynd.gov](mailto:wrđ@casscountynd.gov)  
[casscountynd.gov](http://casscountynd.gov)

David F. Brakken  
February 11, 2020  
Page 2

Enclosed is an appraisal regarding the value of the right of way the District must acquire from you, as determined by a licensed North Dakota appraiser. As you can see from the appraisal, the appraiser indicated the value of the right of way the District must acquire from you is \$379,000.00. The District approved the appraisal and this letter is the District's offer to you in the amount of \$379,000.00 as just compensation to purchase right of way from you for the Project. If you are willing to accept the District's offer, please sign the enclosed *Purchase Agreement* and return it to the District in the enclosed self-addressed, stamped envelope.

You are encouraged to maintain contact with the land agent assigned to your property. **Patrick Roberts** of ProSource Technologies, LLC can be reached at **(763) 786-1445** or **proberts@prosourcetech.com**. Patrick is your point of contact for getting answers to any questions you have about the Project and acquisition of right of way from you for the Project.

For your information, North Dakota law requires the District to provide you with a description of the District's negotiation timeline regarding your right of way. If you do not accept the District's offer of just compensation and do not return a signed purchase agreement within fifteen (15) days, the District will send you a written request to discuss the Project and required right of way to be acquired at an upcoming Cass County Joint Water Resource District meeting. Ultimately, the District must conclude all negotiations and complete all acquisitions by Fall 2020.

We look forward to reaching a mutually acceptable agreement to resolve this matter. Thank you for your consideration.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Carol Harbeke Lewis  
Secretary-Treasurer  
1201 Main Avenue West  
West Fargo, ND 58078  
(701) 298-2381  
Lewisc@casscountynd.gov

Enclosures

cc: Jack Dwyer, Dwyer Law Office, PLLC  
Patrick Roberts, Land Agent  
Eric Dodds, Program Manager, AE2S  
Chris McShane, Ohnstad Twichell, P.C.  
Chad Peterson, Cass County Commission Chair  
Robert Wilson, Cass County Administrator  
Birch Burdick, Cass County State's Attorney  
Joel Paulsen, Executive Director, Diversion Authority

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
**DAVID F. BRAKKEN**  
**16868 44TH STREET SE**  
**HORACE, NO 58047**



9590 9402 3806 8032 1534 85

2. Article Number (Transfer from service label)  
**7018 0040 0000 5525 6748**

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 X *LuAnn Brakken*  Agent  Addressee

B. Received by (Printed Name) **LuAnn Brakken** C. Date of Delivery **2-14-20**

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type
- |  |   |
|--|---|
| <input type="checkbox"/> Adult Signature                               | <input type="checkbox"/> Priority Mail Express®                     |
| <input type="checkbox"/> Adult Signature Restricted Delivery           | <input type="checkbox"/> Registered Mail™                           |
| <input checked="" type="checkbox"/> Certified Mail®                    | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input type="checkbox"/> Certified Mail Restricted Delivery            | <input type="checkbox"/> Return Receipt for Merchandise             |
| <input type="checkbox"/> Collect on Delivery                           | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery       | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail                                  |   |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) |   |

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt



CERTIFIED MAIL – RETURN RECEIPT REQUESTED – HAND DELIVERY

March 4, 2020

Cass County  
Joint Water  
Resource  
District

David F. Brakken  
16868 44th Street SE  
Horace, ND 58047  
**Certified No. 7018 0040 0000 5525 7295**

Greetings:

Dan Jacobson  
Chairman  
West Fargo, North Dakota

RE: Cass County Joint Water Resource District  
Fargo-Moorhead Area Diversion Project  
Request for Meeting  
OIN: 9174  
Parcel No.: 15-0000-12655-030

Rodger Olson  
Manager  
Leonard, North Dakota

Ken Lougheed  
Manager  
Gardner, North Dakota

Jacob Gust  
Manager  
Fargo, North Dakota

Keith Weston  
Manager  
Fargo, North Dakota

As you know, the Cass County Joint Water Resource District (the "District") is in the process of developing the Fargo-Moorhead Area Diversion Project (the "Project"). The District previously provided you a letter dated February 11, 2020; a copy of the District's appraisal for your right of way; and a Purchase Agreement as the District's offer of just compensation to purchase right of way from you. The District's letter specifically described the right of way the District must acquire from you for the Project. We have not received a signed Purchase Agreement from you, and we have not otherwise arrived at mutually acceptable terms regarding the District's purchase of right of way from you to accommodate the Project.

The District requests your attendance at a meeting to discuss the District's offer to purchase right of way from you. The District is meeting at the Cass County Highway Department, 1201 Main Avenue West in West Fargo, North Dakota, on March 12, 2020, and March 26, 2020, at 8:00 a.m.

The District hopes you will attend one of the above meetings to discuss the Project and the right of way the District must acquire from you to accommodate the Project.

Carol Harbeke Lewis  
Secretary-Treasurer

1201 Main Avenue West  
West Fargo, ND 58078-1301

701-298-2381  
FAX 701-298-2397  
[wrđ@casscountynđ.gov](mailto:wrđ@casscountynđ.gov)  
[casscountynđ.gov](http://casscountynđ.gov)

Please continue to maintain contact and negotiate with the land agent assigned to your property. **Patrick Roberts** of ProSource Technologies, LLC is your point of contact for getting answers to any questions you have about the Project. Patrick can be reached at **(763) 786-1445** or **[proberts@prosourcetech.com](mailto:proberts@prosourcetech.com)**.

David F. Brakken  
OIN 9174  
March 4, 2020  
Page 2

North Dakota law requires the District to provide you with a description of the District's negotiation timeline regarding your right of way. The District must conclude all negotiations and complete the acquisition of right of way necessary for construction of Project components on your property by Fall of 2020.

The District hopes you will attend one of the upcoming District meetings to discuss the Project and the required right of way. The District looks forward to meeting with you.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Carol Harbeke Lewis  
Secretary-Treasurer  
1201 Main Avenue West  
West Fargo, ND 58078  
(701) 298-2381  
lewisc@casscountynd.gov

cc: Jack Dwyer, Dwyer Law Office, PLLC  
Patrick Roberts, Land Agent  
Eric Dodds, Program Manager, AE2S  
Chris McShane, Ohnstad Twichell, P.C.  
Chad Peterson, Chair, Cass County Commission  
Robert Wilson, Cass County Administrator  
Birch Burdick, Cass County State's Attorney  
Joel Paulsen, Executive Director, Diversion Authority



**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

DAVID F BRAKKEN  
 16868 44TH STREET SE  
 HORACE ND 58047



9590 9402 3806 8032 1529 38

2. Article Number (Transfer from carrier label)

7018 0040 0000 5525 7295

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *L. Ann Brack*  Agent  
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

*L. Ann Brack* *3/7/2020*

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type

- |  |   |
|--|---|
| <input type="checkbox"/> Adult Signature                               | <input type="checkbox"/> Priority Mail Express®                     |
| <input type="checkbox"/> Adult Signature Restricted Delivery           | <input type="checkbox"/> Registered Mail™                           |
| <input checked="" type="checkbox"/> Certified Mail®                    | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input type="checkbox"/> Certified Mail Restricted Delivery            | <input type="checkbox"/> Return Receipt for Merchandise             |
| <input type="checkbox"/> Collect on Delivery                           | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery       | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail                                  |   |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) |   |



**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Cass County  
Joint Water  
Resource  
District

May 22, 2020

David F. Brakken  
16868 44th Street SE  
Horace, ND 58047  
**Certified No. 7019 1640 0002 0398 8590**

Dan Jacobson  
Chairman  
West Fargo, North Dakota

Greetings:

Rodger Olson  
Manager  
Leonard, North Dakota

**RE: Cass County Joint Water Resource District  
Fargo-Moorhead Area Diversion Project  
NOTICE OF INTENT TO TAKE POSSESSION OF RIGHT OF WAY  
OIN: 9174  
Parcel No. 15-000-12655-030**

Ken Lougheed  
Manager  
Gardner, North Dakota

As you know, the Cass County Joint Water Resource District (the "District") is in the process of developing the Fargo-Moorhead Area Diversion Project (the "Project"). On behalf of the District, I previously provided you a letter dated February 11, 2020, a copy of the District's appraisal for your right of way, and a Purchase Agreement as the District's offer of just compensation to purchase the right of way from you. In addition, I also provided you a letter dated March 4, 2020, to invite you to meet with the District for purposes of discussing the acquisition of your land. The parties have conducted the informal and formal negotiation procedures required by law but, unfortunately, the parties have not yet reached a mutually-acceptable agreement regarding compensation for the District's purchase of the right of way from you to accommodate the Project.

Jacob Gust  
Manager  
Fargo, North Dakota

Keith Weston  
Manager  
Fargo, North Dakota

This letter is the District's NOTICE OF INTENT TO TAKE POSSESSION OF RIGHT OF WAY. If we do not have an agreement, the District will be requesting approval from the Cass County Commission to take possession of a right of way easement over your property. Cass County will provide you with at least 30 days' notice of a public meeting, and will invite you to the meeting to discuss the District's request.

Carol Harbeke Lewis  
Secretary-Treasurer

1201 Main Avenue West  
West Fargo, ND 58078-1301

This NOTICE does not preclude the parties from continuing negotiations. The District still hopes the parties can arrive at a mutually-acceptable agreement.

701-298-2381  
FAX 701-298-2397  
 [wrd@casscountynynd.gov](mailto: wrd@casscountynynd.gov)  
 [casscountynynd.gov](http:// casscountynynd.gov)

David F. Brakken  
OIN 9174  
May 22, 2020  
Page 2

You are encouraged to maintain contact with the land agent assigned to your property. **Patrick Roberts of ProSource Technologies, LLC** can be reached at **(763) 786-1445** or **proberts@prosourcetech.com**. Patrick is your point of contact for getting answers to any questions you have about the Project and acquisition of right of way from you for the Project.

North Dakota law requires the District to provide you with a description of the District's negotiation timeline regarding your right of way. Ultimately, the District must conclude all negotiations and complete all acquisitions by Fall 2020.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Carol Harbeke Lewis  
Secretary-Treasurer  
1201 Main Avenue West  
West Fargo, ND 58078  
(701) 298-2381  
[lewisc@casscountynd.gov](mailto:lewisc@casscountynd.gov)

cc: Jack Dwyer, Dwyer Law Office, PLLC  
Patrick Roberts, Land Agent  
Chris McShane, Ohnstad Twichell, P.C.  
Chad Peterson, Chair, Cass County Commission  
Robert Wilson, Cass County Administrator  
Birch Burdick, Cass County State's Attorney  
Eric Dodds, Program Manager, AE2S  
Joel Paulsen, Executive Director, Diversion Authority

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
**DAVID F BRAKKE**  
**16868 44TH STREET SE**  
**NORACE ND 58047**



9590 9402 3806 8032 1541 92

2. Article Number (Transfer from service label)  
**7019 1640 0002 0398 8590**

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 X *LuAnn Brakke*  Agent  Addressee

B. Received by (Printed Name) C. Date of Delivery  
**LuAnn Brakke** **5-26-20**

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type
- |  |   |
|--|---|
| <input type="checkbox"/> Adult Signature                               | <input type="checkbox"/> Priority Mail Express®                     |
| <input type="checkbox"/> Adult Signature Restricted Delivery           | <input type="checkbox"/> Registered Mail™                           |
| <input checked="" type="checkbox"/> Certified Mail®                    | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input type="checkbox"/> Certified Mail Restricted Delivery            | <input type="checkbox"/> Return Receipt for Merchandise             |
| <input type="checkbox"/> Collect on Delivery                           | <input type="checkbox"/> Signature Confirmation™                    |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery       | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail                                  |   |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) |   |



SENT VIA EMAIL [wilsonro@casscountynd.gov](mailto:wilsonro@casscountynd.gov)

July 8, 2020

Cass County  
Joint Water  
Resource  
District

Robert Wilson  
Cass County Administrator  
Cass County Commission  
211 9th Street S  
Fargo, ND 58103

Dan Jacobson  
Chairman  
West Fargo, North Dakota

Rodger Olson  
Manager  
Leonard, North Dakota

Ken Lougheed  
Manager  
Gardner, North Dakota

Jacob Gust  
Manager  
Fargo, North Dakota

Keith Weston  
Manager  
Fargo, North Dakota

Carol Harbeke Lewis  
Secretary-Treasurer

1201 Main Avenue West  
West Fargo, ND 58078-1301

701-298-2381  
FAX 701-298-2397  
[wrđ@casscountynd.gov](mailto:wrđ@casscountynd.gov)  
[casscountynd.gov](http://casscountynd.gov)

Greetings:

RE: Cass County Joint Water Resource District  
Fargo-Moorhead Area Diversion Project  
Request for Approval to Take Possession of Necessary Right of Way  
OIN: 9174  
Parcel No. 15-0000-12655-030

As you know, the Cass County Joint Water Resource District (the "District") is in the process of acquiring the right of way necessary for the Fargo Moorhead Diversion Area Project ("Project"). I previously copied you on the following three letters whereby the District sought to negotiate the acquisition of the right of way from David F. Brakken (the "Landowner"):

- Letter dated February 11, 2020, enclosing the District's appraisal for the acquisition of the right of way from the Landowner and a proposed Purchase Agreement;
- Letter dated March 4, 2020, inviting the Landowner to meet with the District for purposes of negotiating compensation for the right of way to be acquired; and
- Letter dated May 22, 2020, notifying the Landowner the District planned to submit a request to the Cass County Commission seeking immediate possession of the right of way necessary for the Project.

The District has conducted months of negotiations with the Landowner to arrive at a mutually acceptable agreement for the District's purchase. More specifically, the District engaged in both informal and formal negotiations with the Landowner, as required under N.D. Cent. Code § 61-16.1-09(2)(b), in an effort to reach agreement regarding fair compensation to the Landowner for the acquisition of the necessary right of way over, across, and through certain property owned by the Landowner in Cass County, North Dakota. The legal description of the necessary right of way is as follows:

Right of Way Easement:

That part of the Northeast Quarter (NE¼) of Section Thirteen (13), Township One Hundred Thirty-eight (138) North, Range Fifty (50) West of the Fifth Principal Meridian, Cass County, North Dakota described as follows:

Commencing at a found iron monument designating the Northeast corner of said Section 13, thence South 87°39'51" West on an assumed bearing along the North line of said Northeast Quarter a distance of 1,610.00 feet to the point of beginning of the tract to be described; thence South 02°20'09" East a distance of 720.00 feet; thence South 87°39'51" West a distance of 605.00 feet; thence North 02°20'09" West a distance of 720.00 feet to a point on the North line of said Northeast Quarter; thence North 87°39'51" East along the North line of said Northeast Quarter a distance of 605.00 feet to the point of beginning. The above-described tract contains 10.00 acres.

As you may recall, in 2017, the North Dakota Legislature modified the process for water resource districts to acquire immediate possession of right of way necessary for water projects; the new process is set forth in Section 61-16.1-09(2)(b). The District has followed all of the necessary steps under the statute, but the parties have not reached a mutually acceptable agreement. Under the new acquisition process enumerated in Section 61-16.1-09(2)(b)(3), the District must next seek the County Commission's approval to proceed further, and to ultimately utilize quick take eminent domain to take possession of the right of way above to commence the Project.

More specifically, Section 61-16.1-09(2)(b)(3) requires the County Commission to hold a public meeting and to provide the Landowner no less than thirty days' notice of the meeting. The District will also attend the meeting, along with the land agent, Patrick Roberts, who was the Landowner's main point of contact throughout the negotiation process. Prior to the public meeting, the land agent and the District will verify neither the District nor any of its agents referenced or threatened quick take eminent domain during the informal and formal negotiation process.

While the District takes all landowners' rights very seriously, the District also has an obligation, as a member of the Metro Flood Diversion Authority, to acquire the right of way necessary for the Project, and construction of the Project will not be possible without acquiring the right of way identified above. As the District will explain and verify for the Commission in more detail through this process, the District provided the Landowner with the District's appraisal as the starting point for negotiations, then attempted to negotiate further with the Landowner over the course of several months. This step is not one the District takes lightly; quick take eminent domain is a serious undertaking, and the District has negotiated in good-faith with the Landowner to avoid this process. Despite the District's efforts to be fair, friendly, and flexible in both the informal and formal negotiations with the Landowner, unfortunately, the parties have not reached a mutually acceptable agreement for the acquisition of the right of way.

Robert Wilson  
July 8, 2020  
Page 3

The District respectfully requests that the Cass County Commission proceed with the public meeting process under Section 61-16.1-09(2)(b)(3) regarding the Landowner and the right of way identified in this letter. Further, the District respectfully requests that the Cass County Commission ultimately approve the District's use of quick take eminent domain to take possession of the right of way identified above by quick take eminent domain so the Project may proceed. For your information, while the County conducts the process under Section 61-16.1-09(2)(b)(3), the District still hopes the parties can arrive at a mutually-acceptable agreement.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Carol Harbeke Lewis  
Secretary-Treasurer  
1201 Main Avenue West  
West Fargo, ND 58078  
(701) 298-2381  
[lewisc@casscountynd.gov](mailto:lewisc@casscountynd.gov)

cc: Patrick Roberts, Land Agent  
Chris McShane, Ohnstad Twichell, P.C.  
Birch Burdick, Cass County State's Attorney  
Joel Paulsen, Executive Director, Diversion Authority  
Eric Dodds, AE2S Program Manager  
Sharon Oliver, ROW Acquisition Coordinator, Ohnstad Twichell, P.C.  
Heather Worden, Administrative Assistant, Cass County Commission



July 13, 2020

**UPS – DELIVERY CONFIRMATION**

**County  
Administrator**

David F. Brakken  
16868 – 44<sup>th</sup> Street Southeast  
Horace, North Dakota 58047

Robert Wilson  
701-241-5770  
wilsonro@casscountynd.gov

Re: Cass County Commission  
Fargo-Moorhead Area Diversion Project  
Invitation to Attend Public Meeting  
OIN: 9174  
Parcel No. 15-0000-12655-030  
UPS Tracking No. 1Z RT8 7R1 25 0287 7056

Greetings David F. Brakken:

As you know, the METRO FLOOD DIVERSION BOARD OF AUTHORITY (the "Authority") is proceeding with the Fargo Moorhead Diversion Area Project ("Project"); the Cass County Commission (the "Commission") is a member of the Authority. The Cass County Joint Water Resource District (the "District") is also a member of the Authority, and the Authority previously directed the District to obtain the North Dakota right of way necessary to accommodate the Project. You have been in negotiations with the District and its agents regarding right of way the District must acquire from you for the Project. The District copied the Commission on the following three letters the District sent to you regarding the District's negotiations with you:

- Letter dated February 11, 2020, enclosing the District's appraisal for the acquisition of the right of way from you, along with a proposed Purchase Agreement;
- Letter dated March 4, 2020, inviting you to meet with the District for purposes of negotiating compensation for the right of way to be acquired; and
- Letter dated May 22, 2020, notifying you the District planned to submit a request to the Commission seeking immediate possession of the right of way necessary for the Project.

The District informed the Commission that you and the District have not reached a mutually-acceptable agreement, and have not signed a purchase agreement, regarding the right of way the District must purchase from you to accommodate the Project.

Box 2806  
211 Ninth Street South  
Fargo, North Dakota 58103

www.casscountynd.gov



With that in mind, the District recently requested approval from the Commission to utilize quick take eminent domain to take possession of the right of way the District must acquire from you. The legal description of the necessary right of way is as follows:

Right of Way Easement:

That part of the Northeast Quarter (NE¼) of Section Thirteen (13), Township One Hundred Thirty-eight (138) North, Range Fifty (50) West of the Fifth Principal Meridian, Cass County, North Dakota described as follows:

Commencing at a found iron monument designating the Northeast corner of said Section 13, thence South 87°39'51" West on an assumed bearing along the North line of said Northeast Quarter a distance of 1,610.00 feet to the point of beginning of the tract to be described; thence South 02°20'09" East a distance of 720.00 feet; thence South 87°39'51" West a distance of 605.00 feet; thence North 02°20'09" West a distance of 720.00 feet to a point on the North line of said Northeast Quarter; thence North 87°39'51" East along the North line of said Northeast Quarter a distance of 605.00 feet to the point of beginning. The above-described tract contains 10.00 acres.

The Commission invites you to attend the Commission's meeting on August 17, 2020 at 3:30 p.m., via conference call or Microsoft Teams. The District will also participate in the meeting, along with the District's land agent, Patrick Roberts, who was your primary point of contact throughout the negotiation process. At the meeting, the Commission will ask the District to verify the District's compliance with Section 61-16.1-09(2) of the North Dakota Century Code. The Commission will ultimately vote on whether to approve the District's use of quick take eminent domain to take a right of way easement over your property.

Over the next several months, in light of Covid-19, the Commission will conduct its meetings via conference call and Microsoft Teams, in accordance with Governor Burgum's Executive Order 2020-16. With that in mind, we request your attendance electronically or by telephone. If you plan to participate in the Commission's August 17, 2020 public meeting, please contact Heather Worden at (701) 241-5609 or [wordenh@casscountynd.gov](mailto:wordenh@casscountynd.gov) as soon as possible so Ms. Worden can assist you with the necessary arrangements.

This Notice does not preclude you from continuing to work with the District regarding the right of way easement necessary for the Project. In fact, the Commission and the District encourage you to maintain contact with Patrick Roberts and to continue discussions about the Project. Patrick Roberts of ProSource Technologies, LLC is your point of contact regarding the Project. You can reach Patrick Roberts at (319) 899-0433 or [proberts@prosourcetech.com](mailto:proberts@prosourcetech.com).

Brakken  
OIN 9174  
July 13, 2020  
Page 3

Finally, North Dakota law requires the Commission to provide you with a description of the District's timeline regarding your right of way. The District must complete the acquisition of right of way necessary for construction of Project components on your property by Fall of 2020.

Sincerely,

CASS COUNTY COMMISSION



Robert Wilson, Cass County Administrator  
211 Ninth Street South  
Fargo, ND 58103  
(701) 241-5609

cc: Jack Dwyer, Dwyer Law Office, PLLC  
Patrick Roberts, Land Agent  
Birch Burdick, Cass County State's Attorney  
Joel Paulsen, Executive Director, Diversion Authority  
Chris McShane, Ohnstad Twichell, P.C.  
Eric Dodds, AE2S Program Manager  
Sharon Oliver, Ohnstad Twichell, P.C.  
Heather Worden, Administrative Assistant, Cass County Commission

CASS COUNTY GOVERNMENT  
7012415609  
211 9TH ST S  
FARGO ND 581082806

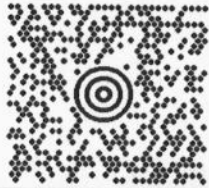
0.1 LBS LTR

1 OF 1

**SHIP TO:**

DAVID F. BRAKKEN  
16868 44TH ST SE

**HORACE ND 58047-9792**



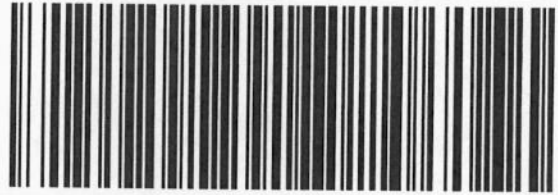
**ND 581 9-02**



**UPS NEXT DAY AIR**

TRACKING #: 1Z RT8 7R1 25 0287 7056

**1**



BILLING: P/P

UIS 22.0.11. WNTINV50 28.0A 04/2020



# Proof of Delivery

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Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

**Tracking Number**

1ZRT87R12502877056

*David Brakken***Weight**

0.10 LBS

**Service**

UPS Next Day Air®

**Shipped / Billed On**

07/13/2020

**Delivered On**

07/14/2020 9:49 A.M.

**Delivered To**

HORACE, ND, US

**Left At**

Front Door

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 07/14/2020 3:50 P.M. EST

**AFFIDAVIT OF PATRICK ROBERTS**

STATE OF NORTH DAKOTA            )  
  ) ss.  
COUNTY OF CASS                    )

[¶1] I, Patrick Roberts, do hereby state on oath:

[¶2] I am employed by ProSource Technologies, LLC as a Land Agent. The Cass County Joint Water Resource District (“the District”) hired ProSource Technologies, LLC to negotiate and acquire the necessary right of way for the Fargo-Moorhead Area Diversion Project (the “Project”).

[¶3] The District must acquire certain interests in real property from David F. Brakken (the “Landowner”) for construction, operation, and maintenance of the Project.

[¶4] Landowner’s real property where the District must acquire a Right of Way for the Project located in Cass County, North Dakota, is more fully described as follows:

Right of Way  
OIN 9174

That part of the Northeast Quarter (NE¼) of Section Thirteen (13), Township One Hundred Thirty-eight (138) North, Range Fifty (50) West of the Fifth Principal Meridian, Cass County, North Dakota described as follows:

Commencing at a found iron monument designating the Northeast corner of said Section 13, thence South 87°39’51” West on an assumed bearing along the North line of said Northeast Quarter a distance of 1,610.00 feet to the point of beginning of the tract to be described; thence South 02°20’09” East a distance of 720.00 feet; thence South 87°39’51” West a distance of 605.00 feet; thence North 02°20’09” West a distance of 720.00 feet to a point on the North line of said Northeast Quarter; thence North 87°39’51” East along the North line of said Northeast Quarter a distance of 605.00 feet to the point of beginning. The above-described tract contains 10.00 acres.

The property described above is the “Necessary Property.”

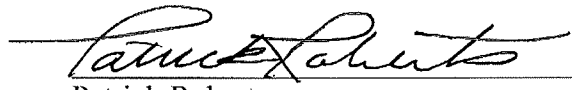
[¶5] Affiant is familiar with the records maintained by ProSource Technologies, LLC with respect to the Necessary Property and has reviewed all such records prior to executing this affidavit.

[¶6] ProSource Technologies, LLC has attempted to negotiate with Landowner to acquire the Necessary Property. Attached as **Exhibit A** is a log of all contacts ProSource Technologies, LLC has had with Landowner.

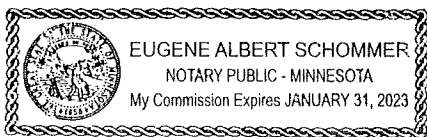
[¶7] The District has instructed ProSource Technologies, LLC to refrain from referencing, mentioning, or threatening quick take eminent domain during negotiations since August 1, 2017.

[¶8] I verify to the best of my knowledge, as Land Agent, nobody from ProSource Technologies, LLC has referenced, mentioned, or threatened quick take eminent domain to Landowner during negotiations, since August 1, 2017.

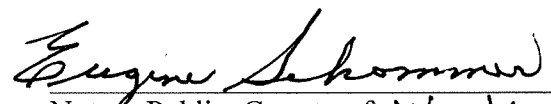
Dated this 29<sup>th</sup> day of JULY, 2020.

  
Patrick Roberts  
Land Agent, ProSource Technologies, LLC

Subscribed to and sworn to before me this 29 day of July, 2020.



(SEAL)

  
Notary Public, County of Washington  
State of Minnesota  
My Commission Expires: 1-31-2023

"EXHIBIT A"

OIN 9174 David Brakken - Contact Report	
Date	Note
8/7/2019	Initial meeting with the property owners and they revealed their extreme disappointment with the appraisal. Patrick Roberts shared the idea of a counteroffer and provided information about supporting information that would be required for a counteroffer that was significantly greater than the appraisal that was completed by the CCJWRD and that such support information would need to be provided by the property owner.
9/11/2019	Land agent introduced to and spoke with attorney Jack Dwyer regarding this parcel. Attorney Dwyer is representing David Brakken, Harvey Brakken and the Samuelson Trust. In the course of that conversation I informed Mr. Dwyer that there is an opportunity to negotiate on the properties that he represents.
9/18/2019	Land agent received an email from attorney Dwyer and within the email a counteroffer was presented on behalf of his client David for \$600,000 for the acquisition of his 10 acre Farmstead including their residence and all outbuildings. The email included an opinion of value for the comparable properties used in the appraisal and additional information to consider.
9/24/2019	Patrick Roberts provided a response to attorney Dwyer requesting additional documentation to further support the counteroffer that had been proposed (counteroffer was 67%+ over the appraisal).
10/21/2019	Land agent received an email that David Brakken had hired a real estate agent to perform a market analysis to justify his request.
11/20/2019	Land agent emailed attorney Dwyer to check on any progress for David Brakken valuation documentation.
12/11/2019	Land Agent received an email from attorney Dwyer with pdf attachments including a plan for the development of the property, which would subdivide the 10 acres into 5 lots and also provided an increased counteroffer of \$691,000 based on this plan (an increase of 82%+). Land agent note: Subdividing of the parcel has not been acted on by the Land Agent. Permitting will need to be checked on. The counteroffer did include some rough estimates of costs that have been deducted from the gross estimated income that could be generated from such a plan. Land Agent suggested, to support this higher counteroffer, the Property Owner or his Legal Counsel would need to provide supporting information.
2/10/2020	Based on the type of documentation that was provided in support of the \$691,000 counteroffer, I advised attorney Dwyer that it would be best to have a 2nd appraisal completed on the property, as the next step in the valuation/negotiation process.
3/4/2020	Formal offer letter sent out to David and his attorney, Jack Dwyer.
3/31/2020	Attorney Jack Dwyer introduces Attorney Lynn Mesteth from his office. Lynn will be handling the David Brakken file going forward.
4/9/2020	Attorney Lynn Mesteth provides a letter to Patrick Roberts, Christopher McShane and Sean Fredricks outlining their counter-offer and providing a land development layout. The counter-offer provides some legal precedence and argument that is more directed to Sean and Christopher.
5/1/2020	Sent email reply to Attorney Mesteth advising I was in receipt of the email from the 9th and have reviewed it and will be presenting to the project team.
5/14/2020	Presented write up and back up documentation to the board. Was advised to continue to negotiate.
5/29/2020	Patrick advised attorney Mesteth that the board had received and reviewed the documentation and the feedback was to continue to negotiate. I asked if attorney Mesteth would like to attend the next board meeting. Invitation accepted.
6/11/2020	Attorney Lynn Mesteth participated in board meeting call and shared information to support counter-offer with the board.





[¶7] The District has fulfilled the required negotiation steps in accordance with subsection 2 of section 61-16.1-09 of the North Dakota Century Code.

[¶8] The District sent a written offer for just compensation to Landowner by certified mail, along with an appraisal and purchase agreement, on February 11, 2020. A copy of the offer (without the appraisal that was included) is attached as **Exhibit 1**.

[¶9] On March 4, 2020, the District sent Landowner a written request for a meeting, by certified mail; the District and Landowner have not reached an agreement regarding compensation, and more than fifteen days have passed since Landowner's receipt of the offer. A copy of the written request for a meeting with Landowner is attached as **Exhibit 2**.


[¶10] The District and Landowner have not reached an agreement regarding compensation, and more than thirty days have passed since Landowner's receipt of the request for a meeting.

[¶11] On May 22, 2020, the District sent Landowner a written notice of intent to take possession of the Right of Way, by certified mail. A copy of the notice of intent is attached as **Exhibit 3**.

[¶12] The District has retained land agents who are in direct contact with Landowner. The District instructed our land agents not to reference, mention, or threaten quick take eminent domain during negotiations. The land agents have verified they have not referenced, mentioned, or threatened quick take eminent domain during the course of negotiations with Landowner since August 1, 2017.

[¶13] I verify there have been no references, mention, or threats of quick take eminent domain by the District during negotiations since August 1, 2017.

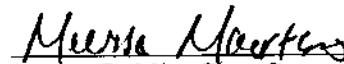
Dated this 5<sup>th</sup> day of Aug, 2020.

  
Dan Jacobson, Chair  
Cass County Joint Water Resource District

Subscribed to and sworn to before me this 5 day of August, 2020.



(SEAL)

  
Notary Public, Cass County, State of North Dakota